

Clay

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CONTRACT FOR
Trending
Clay County, Indiana
2006

CONTRACT FOR
Trending
Clay County, Indiana
2006
ARC #06-IN-341RA-CLY-00-30

This contract is entered into this 7th day of Aug, 2006, by and between the Clay County Commissioners representing the Clay County Assessor hereinafter referred to as the "Assessor", and Appraisal Research Corporation, an Ohio Corporation with an office in Greensburg, Indiana, licensed to do business in Indiana, hereinafter referred to as "Professional Appraiser".

RECITALS

- A. The Assessor has determined that a Professional Appraiser should be employed as a technical advisor for general assessment purposes according to the provisions of IC 6-1.1-4-17;
- B. The Assessor desires to contract with the Professional Appraiser, and the Professional Appraiser is willing to be contracted by the Assessor;
- C. The Professional Appraiser is a professional appraiser as that term is defined in IC 6-1.1-4-17(c) and IC 6-1.1-31.7;
- D. This contract is subject to the provisions of 50 IAC 15, and the Professional Appraiser shall comply with the provisions of 50 IAC 15 in connection with this contract; and

AGREEMENT

In consideration of the premises, mutual covenants and obligations of the parties, the Assessor and Professional Appraiser agree as follows:

A. Incorporation of Recitals

The foregoing recitals are adopted by the parties as being true and accurate statements, and are hereby incorporated as binding representations of this contract.

B. Trending

- 1. The Professional Appraiser shall provide technical assistance to the Assessor in connection with the application of rules and regulations developed by the DLGF concerning the yearly update of real parcels to reflect valuations more closely aligned to current sales.

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



Appraisal Research

2. This technical assistance shall be in the form of providing the Assessor with all necessary information, documentation and valuation calculations necessary to implement the yearly update of real property parcels.
3. This shall include either use the County's CAMA system to develop necessary reports or the development of a sales database which shall download to the DLGF. This database shall contain all information necessary to develop the DLGF yearly update rules and regulations.
4. The Professional Appraiser shall develop the annual trending factors pursuant to IC Code 50 IAC 21. The Professional Appraiser shall present the results of the ratio studies in electronic and written formats. Areas to be addressed shall include, but not be limited to, land values, neighborhood delineation and factors, stratification, and commercial and industrial valuations using alternative approaches to the Regulation 17 guideline. The Professional Appraiser shall be responsible for updating all necessary tables in the County's CAMA system in order to execute the trending factors once they are approved by the Assessor.
5. The Professional Appraiser shall be available to talk with taxpayers on an informal or formal basis to explain, and discuss the Trending process once values are set. This service shall include five (5) person days with additional days available at five hundred dollars (\$500) per day. A person day shall be defined as the time spent by one person in the execution of a task for the length of one regular business day as defined by the Clay County Board of Commissioners.
6. Work shall begin on the project within thirty (30) days of signing of the contract and shall be completed by November 1, 2006, except for taxpayer conferences.

C. Professional Appraiser Certification; and Contract Void on Revocation

1. The Professional Appraiser is certified as a "Professional Appraiser" under IC 6-1.1-31.7. The Professional Appraiser shall take all necessary steps to remain certified as a "Professional Appraiser" under IC 6-1.1-31.7 through the term of the contract.
2. The Professional Appraiser understands that in accordance with IC 6-1.1-31.7-4, the contract is void and the Professional Appraiser shall not receive additional funds under the contract, if the Professional Appraiser's certification as a "Professional Appraiser" under IC 6-1.1-31.7 is revoked.

D. Contract Representative

The Professional Appraiser understands the County Assessor shall be the Contract Representative (herein referred to as "Assessor") and serve as the primary contact person for all townships.

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



E. Reports

1. The Professional Appraiser shall provide the Assessor a work plan showing an appropriate schedule for the completion of work designated in the contract. This work plan shall be presented to the Assessor for approval within fifteen (15) working days after the signing of the contract between the Board of Commissioners and the Professional Appraiser.
2. The Professional Appraiser shall submit progress reports to the Assessors by the 10th day of each month. These reports shall show the status of the project at the end of each month and shall measure the progress of the project in accordance with the work plan submitted to the Assessor. Any deviation shall be commented upon and any corrective action needed shall be highlighted. The Professional Appraiser understands the Assessor shall have the right to require the Professional Appraiser to submit other informational reports as the Assessor deems necessary from time to time. The Professional Appraiser shall provide other reports as they are ordered by the Assessor.
3. County personnel shall have the right to accompany the Professional Appraiser's personnel in their assigned duties to assure contract adherence. The Professional Appraiser shall extend its full cooperation to the Assessor by providing access to all program related records and by making personnel available upon request for the purpose of monitoring quality, performance and progress.
4. The Professional Appraiser shall provide to the legislative services agency and the DLGF unrestricted access to the Professional Appraiser's work product under the contract with pre-approval by the Assessor.

F. Payment System

Claims shall be submitted and paid according to the Board of Commissioners Claims Schedule stated below:

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



Claims Due	Claims Advertised	Claims Paid
1/16/06	1/25/06	1/30/06
2/13/06	2/22/06	2/27/06
3/13/06	3/22/06	3/27/06
4/10/06	4/19/06	4/24/06
5/15/06	5/24/06	5/30/06
6/12/06	6/21/06	6/26/06
7/17/06	7/26/06	7/31/06
8/14/06	8/23/06	8/28/06
9/11/06	9/20/06	9/25/06
10/11/06	10/25/06	10/30/06
11/13/06	11/22/06	11/27/06
12/11/06	12/20/06	12/27/06

G. Penalty

1. If the Professional Appraiser fails to complete the project by the completion date as stated in the contract, then further payments shall be suspended at that time until work has been completed. Upon certification by the Assessor that work has been completed, payment of the suspended amount shall be made to the Professional Appraiser within thirty (30) days after certification.
2. Payments due to the Professional Appraiser shall be reduced by the amount of one hundred dollars (\$100.00) per business day for each business day that reviews by the Professional Appraiser, excluding Saturdays, Sundays and holidays remain incomplete after the due date specified under the contract.
3. Failure by the Assessor to provide information vital to the execution of the contract shall result in an extension of the contract's deadline.

H. County Responsibilities

1. The Assessor shall furnish all documents for assessment purposes, including, but not limited to, parcel maps, GIS, aerial maps, plat maps, property record cards, sales disclosures and an adequate CAMA system.
2. The Professional Appraiser understands the final determination of assessed value and true tax value is and shall remain the responsibility of the Assessor.
3. The Assessor shall be responsible for generating complete parcel characteristics and parcel assessment data in a manner and format acceptable to the legislative services agency and the DLGF.

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



4. The Assessor shall be responsible for adequately providing for the creation and transmission of real property assessment data in a form required by the legislative services agency and the division of data analysis of the department.

I. Non-Discrimination

The Professional Appraiser shall not discriminate against any employee or applicant for employment, to be employed in the performance in this contract, with respect to the individual's hire or tenure, terms, conditions, or privileges of employment because of the individual's race, color, religion, sex, handicap, national origin or ancestry. The breach of this covenant shall be regarded as a material breach of the contract.

J. General Provisions

1. This contract sets forth the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior oral and written agreements and understanding between the Assessor and the Professional Appraiser. No representation, promise, inducement, or statement of intention has been made by either party which is not set forth in this contract and neither party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth.
2. No waiver, alteration, modification, or cancellation of any of the provisions of this contract shall be binding unless made in writing and signed by all those signing this contract, or their successors in office. Failure of either party at any time or times to require performance of any provisions of this contract shall not be considered a waiver and shall in no manner affect the right at a later time to enforce that provision.
3. In the event that one or more of the provisions contained in this contract shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions contained in this contract. If any provisions contained in this contract shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it then shall appear.
4. This contract shall be subject to and interpreted in accordance with the law of the State of Indiana and suit, if any, shall be brought in Indiana courts.
5. This contract shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives, provided, however, that this contract is not binding upon a successor to the elected office of an undersigned Assessor without the successor's prior written consent, nor can the rights, duties, and privileges of the Professional Appraiser under this contract be

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30

transferred, sublicensed or assigned by it, either in whole or in part, without the prior written consent of the Assessor.

K. Delays

Whenever the Professional Appraiser or the Assessor have knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, the party shall within ten (10) days provide written notice of the delay to the other party by certified mail, return receipt requested, including all relevant information with respect to the actual or potential cause of the delay.

L. Termination

In the event of termination or suspension, the Professional Appraiser shall be entitled to receive payment in full (at the amounts and rates set forth herein, or if not specifically set forth in the contract, at the Professional Appraiser's standard or published rates) for all services, software, licenses and/or bonding delivered by the Professional Appraiser up to the effective date of the termination or suspension, as the case may be, plus such other charges as may be agreed upon by the parties.

M. Independent Contractor

In the performance of this contract, Professional Appraiser shall be acting in an individual capacity and not as an agent, employee, partner, joint venture or associate of the Assessor. The employees or agents of the Professional Appraiser shall not be deemed or construed to be the employees or agents of the Assessor for any purpose whatsoever.

N. Liability

1. Except as provided elsewhere, the Professional Appraiser agrees to defend and save harmless the County and their townships, and all agents, officers and employees of those townships and that County, against all claims, demands, payments, suits, actions, recovery, and judgments of every kind and description arising out of the performance of the contract, for personal injury or property damage brought or recovered against it by reason of any negligent action or omission of the Professional Appraiser, its agents, or employees and with respect to the degree to which the County are free from negligence on the part of itself, its employees and agents.
2. Neither party shall be liable to the other for consequential, indirect or incidental damages, including, but not limited to, loss of tax revenue or claims related to valuation of property, even if due to the negligence or other fault of the party released.

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



3. In any event, the Professional Appraiser's liability for damages (except for damage to real or personal property or personal injury as provided above) under any theory of liability or form of action including negligence shall not exceed the total amount paid by the Assessor to the Professional Appraiser under the contract.
4. The Professional Appraiser Shall carry Public Liability Insurance in the amount of \$1,000,000 including protection for bodily injury and property damage with a combined single limit of \$1,000,000 and \$500,000 for each occurrence only to the extent of the obligation assumed by the Professional Appraiser under the contract.
5. The Professional Appraiser shall also maintain Automobile Liability Insurance providing limits of \$1,000,000 per occurrence, and the Professional Appraiser shall provide Worker's Compensation Insurance. The Worker's Compensation Insurance shall provide coverage under the Compensation Act of Indiana and shall provide employer's liability insurance in the amount of \$100,000.
6. At the request of the Assessor, Certificates of Insurance shall be supplied to the Assessor by the Professional Appraiser detailing the above coverage's prior to the commencement of the work. This certificate shall be issued by a carrier authorized to do business within the State of Indiana. The Professional Appraiser shall supply Professional Liability Insurance in the amount of \$5,000,000.

O. Subcontracting

No subcontractors shall be used in the performance of this project. This shall not include the purchase of standard supplies, raw materials or computer systems.

P. Force Majeure

1. Neither party shall be liable for delays or performance failures resulting from and caused by acts beyond either party's control. Such acts shall include acts of God, acts of war, epidemics, communication line failures, power failures, earthquakes, and other similar disasters. In every case the delays must be beyond the control and without the fault or negligence of the nonperforming party.
2. If either party is prevented or delayed in the performance of its obligations hereunder by Force Majeure, that party shall immediately notify the other party in writing of the reason for the delay or failure to perform, describing in as much detail as possible the event of Force Majeure causing the delay or failure and discussing the likely duration of the Force Majeure and any known prospects for overcoming or ameliorating it. Both parties agree to take any commercially reasonable measures to overcome or ameliorate the Force Majeure and its adverse effects on the contract, and to resume performance as completely as is reasonably possible once the Force Majeure is overcome or ameliorated.

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



Q. Maintaining A Drug-Free Workplace

1. Professional Appraiser hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this contract a drug-free workplace, and that it shall give written notice to the Assessor within ten (10) days after receiving actual notice that an employee of the Professional Appraiser has been convicted of a criminal drug violation occurring in Professional Appraiser's workplace.
2. In addition to the provisions of the above, if the total contract amount set forth in this contract is in excess of \$25,000.00, Professional Appraiser further agrees that this contract is expressly subject to the terms, conditions and representations contained in the Drug-Free Workplace certification executed by Professional Appraiser in conjunction with this contract and which is appended as an attachment to this contract.
3. It is further expressly agreed that the failure of Professional Appraiser to in good faith comply with the terms of the above, or falsifying or otherwise violating the terms of the certification referenced above shall constitute a material breach of this Contract, and shall entitle the Assessor to impose sanctions against Professional Appraiser including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of Professional Appraiser from doing further business with the County for up to three (3) years.

R. Non-Solicitation

During the period of agreement and for a period of six (6) months following the project completion date, the Assessor shall not solicit for employment or hire any employee of the Professional Appraiser without the express written consent of the Professional Appraiser.

S. Additional Compensation

Additional compensation that may be due the Professional Appraiser as the result of services requested by the Assessor that are beyond the scope of the contract shall be invoiced in the month subsequent to the month in which the services were provided. Any additional services must be pre-approved by the Assessor.

T. Right To Stop Work For Non-Payment

Failure of the Assessor to make payment when due shall entitle the Professional Appraiser, in addition to its other rights and remedies, to suspend, temporarily, further performance of the contract without liability.

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



U. Public Meetings

1. The Professional Appraiser shall participate in a public meeting and explain the process of trending. The Professional Appraiser shall also participate in a question and answer session upon completion of the contract.
2. The Professional Appraiser understands this public informational meeting shall be at the discretion of the Assessor and any expense of meeting place, etc. shall be the Assessor's responsibility.

V. Consideration

The Assessor shall pay the Professional Appraiser a fee of thirty-nine thousand five hundred dollars (\$39,500) for all duties and responsibilities set forth in this contract.

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



IN WITNESS WHEREOF, the parties have executed this contract by their duly authorized officers.

CLAY COUNTY, INDIANA

Charles Bonn
Commissioner

Date: 8-7-06

[Signature]
Commissioner

Date: 8-7-06

[Signature]
Commissioner

Date: 8-07-06

ATTESTED:

[Signature]
Auditor

Date: August 7, 2006

[Signature]
Assessor

Date: Aug 7, 06

APPRAISAL RESEARCH CORPORATION

Virginia R. Whipple
Virginia R. Whipple, AAS
Regional Manager

Date: 8-1-06

CONTRACT FOR

Trending

Clay County, Indiana

2006

ARC #06-IN-341RA-CLY-00-30



May 1, 2006 TRAVIS BORROUGHS
will call for appt. to install
software.

LETTER OF INTENT
PPDMS
Clay County, Indiana
2006

LETTER OF INTENT
PPDMS
Clay County, Indiana
2006
ARC #06-IN-307R-CLY-00-50

THIS Letter of Intent is entered into this 1 day of MAY, 2006, by and between the Clay County Commissioners on behalf of the Clay County Assessor, hereinafter referred to as the "Assessor" and Appraisal Research Corporation, hereinafter referred to as "ARC".

WHEREAS the Assessor has the need to lease software to perform personal property data organization and calculations; and

WHEREAS ARC is willing and able to provide such software and services in the form of Personal Property Data Management Software hereinafter referred to as "PPDMS".

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein and outlined in Exhibit A "Licensing/Maintenance Terms" included with this Letter of Intent, and viewable on the World Wide Web at <http://appraisalresearch.cc> (Products, PPDMS, PPDMS Licensing Maintenance), the Assessor and ARC enter into this Letter of Intent.

ARTICLE I WORK IN PROGRESS

ARC shall be responsible for providing a license to the Assessor for their use of ARC's PPDMS. PPDMS shall provide the necessary tools to allow the Assessor to accurately calculate personal property values and totals for reporting.

ARTICLE II MAINTENANCE

ARC shall provide maintenance on a yearly basis with the year beginning when the software is installed. This maintenance shall consist of yearly updates to the tables, rolling of pool data from one year to the next, archiving previous year's data and any upgrades necessary to the software to meet Indiana Department of Local Government Finance (DLGF) standards. The maintenance shall also apply to any problems, which are determined to be PPDMS programming errors.

Maintenance fees for 1/1/06-12/31/06 shall be as stated in Article IV. This amount shall be prorated pending the date of install. Maintenance consideration shall remain the same from year to year unless ARC notifies the Assessor before March 1st of the year preceding the due date of the maintenance consideration.

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



Maintenance/Technical support shall be provided via telephone (800) 626-7743 extension #327, or via email at arcin@appraisalresearch.cc. Messages are retrieved three (3) times daily, and calls returned within 24 hours. If additional on-site support is needed for reasons other than stated above, there is an additional charge of \$50.00 per hour (minimum 4 hour increments), plus mileage from the technical support person's home office to the Assessor's office. Additional programming charges are \$50.00 per hour (minimum ½ hour increments), if applicable.

ARTICLE III TIMEFRAME

ARC shall install the software within two (2) weeks of notification by the Assessor that hardware necessary to run the software is in place (See Article V), and this Letter of Intent has been executed. Either party shall have the opportunity of terminating this agreement with thirty (30) days written notice to the other party.

ARTICLE IV CONSIDERATION

The Assessor shall pay ARC a fee of six thousand five hundred dollars (\$6,500.00) for one (1) license, (3) Assessor workstations and one (1) Brazil Township workstation. The maintenance is \$499.00 per unit per year.

Billing shall be sent directly to the Assessor's office, unless otherwise indicated.

ARTICLE V MINIMUM SYSTEM REQUIREMENTS*

The Assessor is required to obtain the following minimum system before installation is performed.

PLATFORM

- PC Compatible
- Pentium III

MEMORY

- 256 MB available

DISC STORAGE

- 1GB FIXED available
- 700 MB REMOVEABLE

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



PRINTER

- System Compatible Laser or Ink Jet **

SOFTWARE

- Windows 98, 2000, XP, NT
- Access 97, 2000, XP

*Failure to meet the minimum system requirements requires a written waiver from ARC.

** PPDMS does not support duplex printing.

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



Appraisal Research

IN WITNESS THEREOF, the parties have executed this Letter of Intent by their duly authorized offices.

CLAY COUNTY, INDIANA

Charlie Brown
Commissioner

Date: 5-1-06

Steve Anderson
Commissioner

Date: 5-1-06

Commissioner

Date: 1-MAY 2006

ATTEST

Joseph McKeef
Auditor

Date: 5-1-06

Arnon L. Royn
Assessor

Date: Apr. 10, 06

APPRAISAL RESEARCH CORPORATION

Virginia R. Whipple
Virginia R. Whipple, AAS
Regional Manager

Date: 4-3-06

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



Appraisal Research

EXHIBIT A

**PERSONAL PROPERTY DATA MANAGEMENT SYSTEM (PPDMS)
PPDMS LICENSING / MAINTENANCE TERMS 2004
BETWEEN
APPRAISAL RESEARCH CORPORATION ("CONSULTANT")
AND
AUTHORIZED SOFTWARE USER ("CLIENT")**

1. DEFINITIONS:

For the purposes of this document, the definitions set forth in this Paragraph 1 shall apply to the respective bolded terms in quotations:

- A) **"Agreement"** This Licensing Agreement, including any Exhibits attached hereto.
- B) **"Authorized User(s)"** Those who have purchased an initial or renewed an existing valid license, from Consultant, for the use of the Licensed Program.
- C) **"Derivative Work"** Shall mean work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgement, condensation, expansion, or any form in which such a pre-existing work may be recast, transformed, or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute a copyright infringement.
- D) **"Enhancement(s)"** Computer program modifications or additions, other than Error Corrections, that may be integrated with the Licensed Programs or offered separately by Consultant and that improves its function, adds new functions, or substantially enhances its performance. Enhancements shall not include programs that have a value and utility separate from the use of the Consultant programs, and that, as a practical matter, may be priced and offered separately from the said program.
- E) **"Error"** A defect in the Licensed Program which can, with reasonable effort, be recreated using a supported operating environment, that prevents, said Program from functioning in substantial conformity with the published specifications pertaining thereto.
- F) **"Error Corrections"** Computer software changes to correct an Error in the Licensed Program that is in a form that allows its application to the said Program to establish material conformity with the State of Indiana's requirements pertaining thereto.
- G) **"Licensed Program"** The computer software referred to as the Personal Property Data Management System (PPDMS) and incorporated by reference, including any extracts from such software derivative works of such software, enhancements of such software, or collective works constituting such software (such as subsequent Releases) to the extent offered to Client under this Terms of maintenance or the License Terms of maintenance covering the described computer software.

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



Appraisal Research Corporation

- H) **"Normal Working Hours"** The hours between 8:00 A.M. and 5:00 P.M. on the days Monday through Friday of each week of the calendar year, excluding regularly scheduled holidays of the Consultant.
- I) **"User"** Defined singularly as one (1) stand alone work station. In the case of network access, the minimum requirement of one (1) server and one (1) workstation will constitute two (2) users. Each additional workstation requested will represent one (1) additional user per workstation.

2. TERMS OF AGREEMENT:

This Agreement will become effective from the date of initial install or upon renewal of the license each January 1st, and will remain in effect until the following January 1st. This Agreement may be otherwise terminated only for cause as set forth in Section 7 of this Agreement entitled "Termination of Agreement."

The Consultant agrees to provide Client with the yearly update to the tables, rolling of pool data from one (1) year to the next, archiving previous year's data and any upgrades necessary to update the software to Indiana Department of Local Government Finance standards. This Agreement shall also apply to any problems that are determined to be PPDMS programming errors.

The payment of the annual maintenance fees will constitute a renewal of the license agreement under which usage of PPDMS is authorized. Acceptance of all terms specified in this agreement, through implied consent, is evidenced by the authorized user(s) action of selecting "OK" in the opening screen of PPDMS.

3. SUPPORT:

During the term of this Agreement, Consultant shall render the following services during Normal Working Hours in support of the Licensed Programs and Equipment:

- A) Telephone hot-line support, including consultation on the operation and utilization of the Licensed Programs. This shall be provided via telephone (800) 626-7743, Extension # 327 or via email at arcin@appraisalresearch.cc. All messages are retrieved three (3) times daily with calls returned within twenty-four (24) hours; and
- B) Upon Client promptly reporting and notifying Consultant in writing of Errors in the Licensed Programs and Client not modifying the Licensed Programs without Consultant's prior written consent, Consultant shall verify such Errors and, in accordance with the following schedule or such longer time period as may be agreed to in writing by Client and Consultant, either notify Client that no such Errors exist or provide to Client for verified Errors, Error Corrections:

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



Appraisal Research

Severity	Client: Up/Down	Debility	Work Around	Correction
1	Down	High	No	2 business days after error is reported to Programmer
2	Up	High	No	5 business days after error is reported to Programmer
3	Up	High / Medium	Yes	15 business days after error is reported to Programmer
4	Up	Low	Yes	By next version release

- C) Consultant's support obligations do not include any data conversion or software development services. Consultant shall only be responsible for supporting Licensed Programs, which are no more than one (1) version prior to the current version of the Licensed Programs.

4. SUPPORT FEES:

Client shall pay Consultant for Error Correction and Enhancements support the annual sum of FOUR HUNDRED NINETY-NINE DOLLARS (\$499.00) per user as defined above, payable in one (1) lump payment at the beginning of the effective period as outlined in Section 2 of this Agreement.

If additional on-site support is needed for reasons other than those stated in the Terms of Agreement, additional charges of FIFTY DOLLARS (\$50.00) per hour (minimum of four (4) hours), PLUS round trip mileage from the Technical Support Technician's home office to the Client's office for each trip. Additional programming charges are FIFTY DOLLARS (\$50.00) per hour (calculated in minimum of ½ hour increments), if applicable.

5. PROPRIETARY RIGHTS AND CONFIDENTIALITY:

- A) Consultant is the exclusive owner of Licensed Programs, Error Corrections, Enhancements, Derivative Works, thereof, and related documentation or maintains sufficient rights as a licensee of certain software incorporated into Licensed Programs to grant to Client the limited rights granted in this Agreement. Nothing in these terms shall be construed to grant Client any right, title, or interest in the Licensed Programs, Error Corrections, Enhancements, Derivative Works, thereof, and related documentation except the limited right to use granted in this Terms of Maintenance and any end-user license with Consultant.
- B) Client recognizes the validity of Consultant's copyrights and trade secrets. Client will cooperate in good faith to secure and preserve Consultant's right and title to the copyrights and trade secrets for Licensed Programs and related documentation, respectively, as if said products were its or their own products. No provision or clause in this Agreement shall be interpreted as an assignment or grant to Client of any right, title, or interest in or to copyrights, and trade secrets, all privileges pertaining thereto

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



Appraisal Research

remaining the exclusive property of Consultant (or in some cases, of its subcontractors), except for the rights granted herein to Client to use the Licensed Programs and related documentation as specified under the Terms of Maintenance. Client agrees upon termination of this Agreement to continue to protect Consultant's copyrights and trade secrets.

- C) Client expressly agrees to retain in confidence, and to require its associates, representatives and agents to retain in confidence, all information, ideas, and concepts imparted to it by Consultant concerning the Licensed Programs. Client agrees to limit its use of any knowledge obtained from Consultant, to those activities covered under the terms of its end-user license maintenance and this Agreement. Client's obligations under these provisions extend past the termination of this Agreement to the earlier of such time as the information protected herein in the Public Domain, or ten years following the termination of this Agreement.

6. INDEPENDENT CONTRACTOR:

Consultant shall be an independent contractor, and this Agreement does not and is not intended to create in any way or manner or for any purpose whatsoever an employer-employee relationship or a principal-agent relationship. In its capacity as an independent contractor, Consultant agrees and represents, and Client agrees, as follows:

- A) Consultant has the right to perform services for others during this Agreement.
- B) Consultant has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- C) Consultant has the right to perform the services required by this Agreement at any place or location and at such times as Consultant may determine and as possible under the terms of this Agreement.
- D) Consultant shall perform the services required by this Agreement, or Consultant's staff, and Client shall not be required to hire, supervise, or pay any assistants to help Consultant.
- E) Consultant is responsible for paying all ordinary and necessary expenses of its staff.
- F) Neither Consultant nor Consultant's staff shall be required to devote full-time to the performance of the services required by this Agreement.
- G) Client shall not provide any insurance coverage of any kind for Consultant or Consultant's staff.
- H) Consultant's agents or employees shall not be considered, in any manner, as employees of Client or have any rights to any benefits that Client grants its associates.

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



- I) Consultant shall not be considered or deemed to be an agent, employee, joint venture, or partner of Client.
- J) Consultant shall have no authority to contract for or bind Client in any manner and shall not represent itself as an agent of Client or as otherwise authorized to act for or on behalf of Client.

7. TERMINATION OF MAINTENANCE:

- A) Each party has the right to terminate this Agreement if the other party has materially breached any obligation herein and such breach remains uncured for a period of thirty (30) days after notice thereof is sent to the other party.
- B) If, at any time after commencement of the services required by this Agreement, Client shall, in its sole reasonable judgment, determine that such services are inadequate, unsatisfactory, or substantially not conforming to the descriptions, warranty representations contained in this Agreement, Client may begin to terminate this Agreement upon thirty (30) days written notice to Consultant.
- C) Full termination takes place when Client provides Consultant with written notification of intent to terminate and complies fully with Section 8 of this Agreement. Upon full termination of this Agreement, that is, where the Client has given written notice of intent to terminate but still retains the program and other property of the Consultant, shall not relieve Client from the obligation to pay Consultant for all services rendered up to the date of full termination included an Extended Use Fee, which shall not exceed one-twelfth (1/12) of the yearly maintenance fee per user per month.

8. RETURN OF ALL MATERIALS:

Upon written notification of intent to terminate this Agreement, Client shall promptly return to Consultant all of the Consultant's data, materials (including all materials embodying any Trade Secrets), reports and all other property (and all copies of same) held by the Client. Consultant shall promptly return any property of the Client's held by Consultant. It also allows only the Consultant to physically remove all the computer application and all associated element from all machines of which it is installed.

9. WARRANTIES AND REPRESENTATIONS:

Consultant warrants and represents that:

- A) Consultant will not knowingly infringe upon any copyright, patent, trade secret or other property right of any former client, employer or third party in the performance of the services required by this Agreement.

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



- B) Consultant has not granted any rights or licenses to any intellectual property or technology that would conflict with Consultant's obligations under this Agreement.
- C) THE WARRANTIES AND REPRESENTATIONS ABOVE SET FORTH IN THIS SECTION 9 ARE THE ONLY WARRANTIES AND REPRESENTATIONS MADE BY CONSULTANT UNDER THIS AGREEMENT. CONSULTANT MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ANY, AND ALL, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND EXCLUDED BY CONSULTANT.

10. LIMITATION OF CONSULTANT'S LIABILITY TO CLIENT:

- A) IN NO EVENT SHALL CONSULTANT BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR SIMILAR LOSSES) DUE TO BREACH BY CONSULTANT OF THE LIMITED WARRANTY CONTAINED HEREIN EVEN IF CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- B) The cumulative liability of Consultant to the Client for all claims related to the support services for the Licensed Programs provided under this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of all fees paid to Consultant by Client under this Agreement.
- C) Consultant shall not be liable for any claim or demand made against Client by any third party, except as provided in Section 9 of this Agreement entitled "Warranties and Representations;" and the cumulative liability of Consultant to such third party for all such claims shall not exceed the total amount of all fees paid to Consultant by Client under this Agreement.
- D) Client shall indemnify Consultant against all claims, demands, and costs, including reasonable attorney fees, of defending any claim or demand by any third party, except as to the items contained in Section 9 of this Agreement entitled "Warranties and Representations;" arising out of or in connection with Client in writing of any such claim or demand and Client shall have the right to fully control the defense and any settlement of the claim or demand.

11. EMPLOYMENT OF ASSISTANTS OR SUBCONTRACTORS:

Consultant may, at Consultant's own expense, employ such assistants or subcontractors, as Consultant deems necessary to perform the support services required by this Agreement. Client shall have the right, upon reasonable notice to Consultant, to reject any of Consultant's assistants or subcontractors whose qualifications in Client's good faith and reasonable judgment are insufficient for the satisfactory performance of the support services required by this Agreement.

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



12. MEDIATION AND ARBITRATION

Except for the right of Consultant to bring suit on an open account for simple moneys due Consultant, any dispute arising under this Agreement shall be resolved through a mediation-arbitration approach. The parties agree to select a mutually agreeable, neutral third party to help them mediate any dispute that arises under this Agreement. If the mediation is unsuccessful, the parties agree that the dispute shall be decided by binding arbitrations under the rules of the American Arbitration Association. The decision of the arbitrators shall be final and binding on the parties and may be entered and enforced in any court of competent jurisdiction by either party. The parties shall share costs and fees associated with the mediation equally. The prevailing party in the arbitration proceedings shall be awarded reasonable attorney fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, unless the arbitrators shall for good cause otherwise determine.

13. GENERAL PROVISIONS:

- A) This Agreement, together with any Exhibits attached hereto and incorporated by reference, is intended by the Consultant and Client to be the final expression of their agreement, and constitute the full entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements, oral or written, to the contrary heretofore made. The Consultant may amend this Agreement at any time without notification.
- B) In the event that any of the terms of this Agreement is or becomes or is declared to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement, and all the remaining terms shall remain in full force and effect.
- C) This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.
- D) Client represents and acknowledges that Client is not relying on any representation or warranty from Consultant regarding support services, except as specifically set forth in this Agreement, including, but not limited to, any representation as to future product offerings.
- E) Client shall not assign, or otherwise transfer any of the obligations undertaken or rights granted under this Agreement without the prior written consent of Consultant. The parties to this Agreement agree that any assignment would increase materially the burden of risk imposed on Consultant by this Agreement and impair materially Consultant's chance of obtaining return performance.

LETTER OF INTENT

PPDMS

Clay County, Indiana

2006

ARC #06-IN-307R-CLY-00-50



Tran Type	Effective Date	Tran Date	Fund	Acct	Loc	Amount	Check No	Invoice	Invoice Date
Claim	04/30/2007	04/30/2007	434	37001	434	16,458.31	022139	332341	04/05/2007
Claim	03/26/2007	03/26/2007	434	37001	434	3,291.67	021797	332218	03/05/2007
Claim	02/26/2007	02/26/2007	434	37001	434	2,791.67	021535	332085	02/05/2007
Claim	01/29/2007	01/29/2007	434	37001	434	3,291.67	021210	331748	12/05/2006
Claim	01/29/2007	01/29/2007	434	37001	434	3,291.67	021210	331605	11/03/2006
Claim	01/29/2007	01/29/2007	434	37001	434	3,291.67	021210	331923	01/05/2007
Claim	01/29/2007	01/29/2007	434	37201	434	2,994.00	021210	331641	11/22/2006
Claim	01/29/2007	01/29/2007	434	37201	434	5,135.00	021210	331786	12/12/2006
Claim	10/30/2006	10/30/2006	434	37001	434	3,291.67	019874	1ST INSTALLMENT	
Claim	10/30/2006	10/30/2006	434	37001	434	3,291.67	019874	2ND INSTALLMENT	
Claim	07/31/2006	07/31/2006	434	37001	434	8,996.36	018880	331077, 331078	
						56,125.36			